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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,094	09/12/2003	Kirsty Jane Dodgson	875.092US1	7668
21186 7590 12/03/2008 SCHWEGMAN, LUNDBERG & WOESSNER, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402				
EXAMINER				
HINES, JANA A				
ART UNIT		PAPER NUMBER		
1645				
MAIL DATE		DELIVERY MODE		
12/03/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/661,094

Applicant(s)

DODGSON, KIRSTY JANE

Examiner

JaNa Hines

Art Unit

1645

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 November 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☒ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: None.
Claim(s) objected to: None.
Claim(s) rejected: 1,8,9,15-19,23,25 and 44-57.
Claim(s) withdrawn from consideration: 2-7,10-14,20-22,24 and 26-31.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Mark Navarro/
Primary Examiner, Art Unit 1645

The proposed after final amendment will not be entered because the amendment raises new issues that would require further consideration and search. Also the proposed amendment presents additional claims without cancelling a corresponding number of finally rejected claims. Furthermore, the proposed after final amendment is not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal. Therefore the proposed after final amendment will not be entered.

The written description rejection of claims 1,8-9, 15-19, 23, 25 and 44-55 under 35 U.S.C. 112, first paragraph, is maintained for reasons of record. The rejection is maintained for reasons already of record.

The new matter rejection of claims 1,8-9, 15-19, 23, 25 and 44-57 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement is maintained. The rejection is on the grounds that neither the specification nor originally presented claims provides support for a method to detect vanA in a sample, comprising: a) contacting a sample suspected of comprising amplified vanA nucleic acid with at least one vanA-specific oligonucleotide probe under conditions effective to form a hybrid between the vanA-specific oligonucleotide probe and vanA nucleic acid in the sample, wherein the vanA-specific oligonucleotide probe consist of 15 to 40 nucleotides and has a sequence with at least 80% nucleic acid sequence identity to SEQ ID NO:3, the complement of SEQ ID NO:3, wherein the amplified vanA nucleic acid is obtained with a first and second oligonucleotide primer each consisting of 15 to 40 nucleotides, wherein the first oligonucleotide primer has a sequence with at least 80% nucleic acid sequence identity to SEQ ID NO:2, and the second oligonucleotide primer has a sequence with at least 80% nucleic acid sequence identity to SEQ ID NO:4, wherein the sequence of the probe is one which is effective to form a hybrid with SEQ ID NO:3 or its complement, wherein the sequence of the first primer is one which is effective to form a hybrid with the complement of SEQ ID NO:2, and wherein the sequence of the second primer is one which is effective to form a hybrid with the complement of SEQ ID NO:4; and b) detecting or determining the presence or amount of hybrid formation between the probe and nucleic acid in the sample, wherein hybrid formation is indicative of vanA nucleic acid in the sample.

The rejection of claims 1,8-9, 15-19, 23,25 and 44-57 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention is maintained for reasons of record.